

Memorandum

Date : August 16, 2002
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To : William J. Keese, Chairman and Committee Presiding Member File: CAPE_DReqs.doc
James D. Boyd, Commissioner and Committee Associate Member

From : California Energy Commission - Marc Pryor
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject : **MORRO BAY POWER PLANT PROJECT (00-AFC-12) - STAFF'S
RECOMMENDATIONS REGARDING CAPE'S DATA REQUESTS TO DUKE**

On August 13, 2002 the Committee for the Morro Bay Power Plant project (00-AFC-12) directed Energy Commission staff to provide impartial technical support to aid the Committee. Specifically, the Committee directed staff biologists to provide comment based on their technical expertise and experience. Comments are to address the Applicant's objections and Coastal Alliance on Plant Expansion's (CAPE) responses regarding the 14 data requests still in dispute. Staff is also to indicate which, if any, of the data identified in CAPE's Petition Staff has available.

Staff has read the Data Requests submitted by CAPE, Applicant's objections to answering certain requests, and CAPE's "Petition for Order Directing Duke to Respond to Data Requests Propounded by Coastal Alliance on Plant Expansion (CAPE)".

Staff believes all the information requested is relevant to Duke's Habitat Enhancement Plan (HEP) proposal, but is not necessary for the Committee or Commission to make a decision on Duke's proposal. Staff, therefore, does not believe Duke should be ordered to provide the requested information, except for DR-16, 25, 29, and 55, as indicated below. A number of data requests are focused on information quoted from or of Duke's interpretation of information found in various cited reports. These reports are available to the public and can be obtained by CAPE, who can then review and draw their own conclusions.

Staff lists CAPE's 14 data requests (DR) for which Duke has objections and staff's recommendation regarding which requests Duke should be directed to answer.

DR-8 Requests a list of all industrial facilities in the continental US withdrawing greater than or equal to 100 million gallons of cooling water per day through cooling water intake structures for which a HEP is Best Technology Available. Also 1) requests identification which of these facilities withdraw cooling water from a tidal estuary, 2) requests the volumes of cooling water withdrawn, and 3) the static volumes of the estuaries.

Recommendation: Do Not Order Response. The requested information would be helpful, but not necessary to evaluate and make a decision on

Duke's proposal. Staff believes that any of the parties, including CAPE, can collect the information themselves.

Staff does not have or seek this information.

- DR-9** Requests that Duke Provide information about the confidence interval for the Tetra Tech model Duke relies on in its HEP proposal.

Recommendation: Do Not Order Response. Duke should not be directed to generate this information because CAPE can either conduct the analysis itself or request the information directly from Tetra Tech.

Staff does not have or seek this information.

- DR-16** Requests that Duke disclose any studies that support its claim that a HEP would adequately mitigate the impact from the proposed once through power plant cooling system.

Recommendation: Order Partial Response. Duke should provide the sources it consulted regarding the effectiveness of HEP projects, as CAPE requests. The information is relevant to Duke's proposal and is reasonably available to Duke. On the other hand, Duke should not be ordered to discuss population trends of each of the bay species. The information is probably not reasonably available to Duke in that CAPE is requesting Duke to research population trends for each bay species and to discuss all the data it collects for each species of "flora, fauna, and habitat type." Such a study and discussion are not reasonably necessary for the Commission to make a decision on Duke's proposal.

Staff does not have or seek this information.

- DR-25** Requests that Duke cite and include all sources consulted that support its conclusion that actions plans in the RWQCB's Total Maximum Daily Level (TMDL) and the Soil and Conservation Service's (SCS) CCMP are appropriate mitigation for the proposed cooling water intake system's entrainment impacts.

Recommendation: Order Response. Staff believes the requested information is relevant and may be obtained from the National Estuary Program (NEP). However, Duke does make these plans integral in their HEP proposal and the answer should be fairly easy. Therefore, staff believes Duke should answer this request.

Staff does not have or seek this information.

- DR-26** Requests that Duke explain why more money is needed to reduce sedimentation that is already controlled significantly by the existing Chorro Flats project.

Recommendation: Do Not Order Response. CAPE should obtain the requested information directly from the sources, NEP and the Regional Water Quality Control Board. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide the information directly to CAPE instead.

Staff does not have or seek this information.

- DR-29** Requests information about the effectiveness of the Elkhorn Slough Environmental Enhancement Plan and its relevance to the proposed Morro Bay HEP.

Recommendation: Order Response. Duke should provide an answer. Duke uses the Elkhorn Slough to support its HEP proposal and should answer the request in a clear and concise manner.

Staff does not have or seek this information.

- DR-32** Requests that Duke disclose the basis for its claim that the primary problem threatening the Morro Bay Estuary is sedimentation.

Recommendation: Do Not Order Response. CAPE should obtain the information directly from the NEP, which has conducted relevant studies. The information is not reasonably necessary for the Commission to make a decision about Duke's proposal, which should be analyzed with respect to any impacts associated with or caused by the proposed power plant.

Staff does not have or seek this information.

- DR-35** Requests that Duke provide the range of estimates that the Soil Conservation Service used and what the level of confidence was for the estimates. In addition, CAPE asks whether Duke's proposed HEP will attempt to mitigate sediment due to development.

Recommendation: Do Not Order Response. CAPE should request the information directly from the source, either the RWQCB or Soil Conservation Service, regarding TMDL limits and sediment estimates. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide it directly to CAPE instead.

Staff does not have or seek this information.

- DR-36** Requests information as to whether Duke has attempted to validate the estimates of sediment concentration preliminarily published by the RWQCB.

Recommendation: Do Not Order Response. In effect, this data request seeks validation by actual measurements of estimates for sediment concentrations that Duke uses to support its HEP proposal. Duke's report, as quoted in the data request, claims that actual measurements of suspended sediment concentration in the Bay were not available. Duke has, thus, already indicated that it has not relied on actual measurements and should not be ordered to respond again. To the extent CAPE questions the validity of Duke's estimates based on the report Duke cites, CAPE should evaluate the cited report.

Staff does not have or seek this information.

- DR-44** Requests any maps that show the decline in the volume of the estuary due to man-made landfill.

Recommendation: Do Not Order Response. CAPE should obtain the requested maps directly from the two reports cited in the data request or the reports' authors. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide it directly to CAPE instead. Moreover, the requested information is not reasonably necessary for the Commission to make a decision on Duke's proposal.

Staff does not have or seek these maps.

- DR-49** Requests any data that relate to the alleged loss of habitat in Morro Bay due to sedimentation.

Recommendation: Do Not Order Response. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide it directly to CAPE instead. Moreover, the requested information is not reasonably necessary for the Commission to make a decision on Duke's proposal.

Staff does not have or seek the applicable reports.

- DR-52** Requests that Duke cite specific scientific references for the scientific basis of NEP's choice of priority actions.

Recommendation: Do Not Order Response. CAPE should obtain the requested information directly from a NEP representative. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide it directly to CAPE instead. Moreover, the requested information is not reasonably necessary for the Commission to make a decision on Duke's proposal.

Staff does not have or seek this information.

- DR-53** Requests that Duke identify all sources of funding that are available for the implementation of the action items identified by the NEP.

Recommendation: Do Not Order Response. CAPE should obtain the requested information directly from a NEP representative. Staff does not believe Duke should be ordered to collect information from sources that could just as easily provide it directly to CAPE instead. Moreover, the requested information is not reasonably necessary for the Commission to make a decision on Duke's proposal.

Staff does not have or seek this information.

- DR-55** Requests that Duke disclose the basis for its claim that preliminary investigation of land acquisition and related costs suggest that there are sufficient opportunities to offset the proposed plant's cooling water effects on Morro Bay.

Recommendation: Order Partial Response. Information requested regarding Duke's "efforts to date to identify potential land suitable for this project" is reasonably available to Duke and Duke should be ordered to respond. However, the locations and costs of parcels based on Duke's preliminary investigation are not reasonably necessary for the Commission to make a decision on Duke's proposal. Staff believes Duke should not be ordered to provide this information.

Staff does not have or seek this information.

MSP:mSP

cc: Morro Bay Power Plant Project POS list
Docket (00-AFC-12)